IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1159 OF 2002

Pandurang Narayan Bhise,
Age 36 Yrs. R/at village
Bavale, Post: Sandoshi,
Tal. Mahad, Dist. Raigad
At present R/of Village
Verse, Shiraj Vasahat,
Varse, Tal. Roha,
Dist: Raigad,
Now convicted imprisoned in
Alibag Prison, Dist. Raigad ...Appellant.

V/s

The State of Maharashtra
(Through Roha Police Station,
Dist: Raigad) ...Respondent.

Shri Abhaykumar Apte with Shri Mahesh Mule for the appellant.

Shri A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.
DATE : 16TH OCTOBER, 2004.

ORAL JUDGMENT:

1. Appellant is challenging the Judgment and Order passed by IInd Ad-hoc Additional Sessions Judge, Raigad in Sessions Case No.54 of 2001. By the said Judgment and Order dated 9/10/2002, the appellant was convicted under section 376 of the Indian Penal Code and was sentenced to suffer R.I. for 10 years and to pay fine of Rs 2,000/- and, in default, to suffer S.I. for 2 months. He was also convicted under section 326 of the I.P.C. and sentenced to suffer R.I. for 3

years and to pay fine of Rs 1,000/- and, in default, to suffer S.I. for one month. He was also convicted under section 324 of the I.P.C. and sentenced to suffer R.I. for one year.

2. Prosecution's case is that the accused is the father of the prosecutrix Swati. The accused was married with the mother of the prosecutrix about 17 years before the alleged incident and three daughters and two sons were born to the accused and his wife. Swati was the eldest. Prosecution's case is that the accused was addicted to liquor and used to ill-treat his wife and children under the influence of liquor. Prosecution's case is that the accused raped the prosecutrix in February 1998 and, thereafter, in June, 1999. However, prosecutrix did not make complaint against her father. According to the prosecutrix, the accused had raped her for about 14 to 15 times from 1998 till the date on which the complaint was filed. On 3/1/2001, the accused again committed rape on the prosecutrix and had beaten her and her mother. A complaint was lodged by her mother and the accused was kept in Police Custody till 11/1/2001. After the incident, the prosecutrix informed her mother about the conduct of the accused. After the accused was released by the Police on 12/1/2001, the accused

assaulted the prosecutrix with knife on her waist and when she fallen down, accused gave second blow on her shoulder. When the maternal uncle of the prosecutrix tried to intervene, he was also assaulted by the same knife by the accused on his chest. The Trial Court convicted the accused.

3. The learned Counsel appearing on behalf of the accused submitted that the prosecution had not examined the doctor. He submitted that there were no injuries on the private parts of the prosecutrix. he submitted that, therefore, the theory of rape was not established by the prosecution. He submitted that the injuries which were inflicted on Swati and her maternal uncle were simple in nature and, therefore, conviction under section 326 and 324 of the I.P.C. was not justified.

4. The learned APP appearing on behalf of the State vehemently opposed the said submissions. He submitted that the evidence of the prosecutrix was corroborated by her mother and, therefore, there was no reason to disbelieve the testimony of the prosecutrix and her mother. He submitted that there was no reason for the prosecutrix who as the daughter of the accused to falsely implicate him for the offence of section 376

of the I.P.C. He submitted that the medical certificate given by the doctor had been admitted by the accused and, therefore, it was not necessary to examine the doctor who had examined the prosecutrix.

5. The prosecutrix has stated in her evidence that the accused had raped her on 14 to 15 occasions between 1998 till the date of filing of the complaint. She has further stated that the accused had assaulted her with a knife on the right side of her abdomen and on her shoulder and also assaulted her younger brother on his left armpit and, thereafter, when she tried to intervene the accused had given a blow on her left thigh with the same knife. This has been corroborated by P.W.1 - Sitaram and P.W.2 - Vasant. Mother of the prosecutrix - P.W.4 has also stated that the accused used to harass the members of the family and that he had raped her daughter on number of occasions and had, thereafter, assaulted her with the knife.

6. I am unable to accept the submission made by the learned counsel appearing on behalf of the appellant that because the doctor has not been examined, the prosecution case of rape on the prosecutrix is not proved. The prosecutrix in her evidence has given an vivid account as to how the accused had committed rape

on her on various occasions. Thereafter, the accused had assaulted her with a knife. The medical certificate which is admitted by the defence is on record which shows that P.W.3 - Swati received incised wounds on her abdomen, left shoulder and thigh. The other injured witnesses also corroborated the testimony of the prosecutrix. In my view, the prosecution has proved beyond the reasonable doubt that the accused had committed the said offence with which he was charged. The finding of the Trial Court, therefore, is confirmed. Accordingly, the following order is passed:-

O R D E R

. In the result, conviction is confirmed.

Appeal is dismissed.

V.M.KANADE, J.